

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 723 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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AUDYOGIK KAMDAR SABHA

Versus

ELECON ENGINEERING CO LTD

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Appearance:

MR YATIN SONI for Petitioner  
MR KM PATEL for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/10/97

ORAL JUDGEMENT

#. This Special Civil Application filed by the Union, Audyogik Kamdar Sabha, arises out of the arbitration award which was impugned by the respondent herein in five Special Civil Applications No.7430 of 1989 to 7434 of 1989, which have been decided today to the substantial extent on the basis of compromise in between the parties. In this case, challenge has been made to that part of the

award where the learned arbitrator has rejected the claim of the petitioner for arbitration expenses which it incurred for attending those proceedings.

#. The learned counsel for petitioner contended that as per the terms of consent in the arbitration, whole expenses of the arbitration, including the honorarium fee which was required to be paid to the arbitrator irrespective of the result of the proceedings, had to be borne by the respondent. In the proceedings the petitioner has incurred in all Rs.56,200/- towards the expenses of arbitration and this amount should have been ordered to be paid by respondent to the petitioner.

#. The part of the award under which the claim of the petitioner has been declined by the Arbitrator has been produced on record of this Special Civil Application. The learned Arbitrator has, after interpreting the clause 5 of the Consent Terms held that the liability to bear all expenses of the arbitration proceedings by respondent only relates to the expenses to be incurred by the Arbitrator including his fees or honorarium. The learned Arbitrator further held that the aforesaid clause does not refer to the expenses of any of the two sides by using phrase like "expenses of parties". The order passed by the Arbitrator in this case denying the expenses claimed by petitioner of the proceedings of the arbitration cannot be said to be arbitrary or perverse. Interpretation of clause 5 which has been made by the learned Arbitrator is not unreasonable and more so to the extent where it calls for any interference of this Court in its writ jurisdiction either under Articles 226 or 227 of the Constitution of India. The clause has to be read as a whole and the words which are there have to be given their plain meaning. After going through the contents of this clause, what it transpires therefrom is that it only contemplates for bearing all the expenses by respondent of the arbitration which are incurred by the Arbitrators in conducting the proceedings as well as their fees or honorarium. In case the interpretation which is sought to be given by the petitioner's counsel to this clause is accepted, then what this Court will do is that it will add something in the clause itself which the parties have not agreed upon. It is a cardinal principle of interpretation of documents that the Court should not add something to the documents which otherwise the contracting parties were not contemplating. The learned counsel for the petitioner is unable to produce on record of this Special Civil Application or otherwise satisfy this Court that the parties while agreeing upon to the settlement of the dispute in arbitration have in fact

contemplated that the expenses which are to be incurred by the petitioner in the arbitration proceedings have to be borne by the respondent. Otherwise also, if we go by the statement of expenses claimed by the petitioner, I fail to see any justification therein. Rs.7,800/- has been claimed as travelling expenses of the two office bearers of the Union. The Union is there for espousing the causes of its members and in connection with espousing the causes of its members, in case it has incurred some expenses, I fail to see any justification to claim this amount from the respondent. That is not the only thing but charging of the sitting fees at the rate of Rs.600/- per sitting for two members has no justification or reasonability or rationality. If the matter is considered from any angle whatsoever, then too the office bearers of the Union are supposed to, and in fact they have undertaken to do so for their own members. It is not case of the learned counsel for petitioner that to defend their case in the arbitration proceeding, the petitioner-Union has paid any professional fees to the Advocate. However, during the course of argument, the learned counsel for petitioner tried to make out a contention that the Advocate's services have been taken, but I do not find anything on record that a single paise has been paid by the petitioner to any professional person to defend the workmen in those proceedings.

#. Taking into consideration the totality of the facts of the case, this writ petition is wholly misconceived and the same is dismissed. Rule discharged. No order as to costs.

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(sunil)